

October 6, 2009

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUITElisabeth A. Shumaker  
Clerk of Court

FREDDY LEE SLACK,

Petitioner - Appellant,

v.

SUSAN JONES, Warden; JOHN W.  
SUTHERS, The Attorney General of the  
State of Colorado,

Respondents - Appellees.

Nos. 09-1312 and 09-1350  
(D.C. No. 1:09-CV-00462-ZLW)  
(D. Colorado)

## ORDER

Before **TACHA, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

In a July 9, 2009 Order and separate judgment, the district court denied Freddy Slack's 28 U.S.C. § 2254 petition. Petitioner, proceeding *pro se*, filed a notice of appeal, which was assigned No. 09-1312. Then, in a July 22, 2009 Order, the district court granted Petitioner's timely Fed. R. Civ. P. 59(e) motion, vacated the July 9, 2009 Order, and reinstated Petitioner's § 2254 proceeding. Petitioner filed another notice of appeal, which was assigned *No. 09-1350*. We dismiss these appeals for lack of jurisdiction.

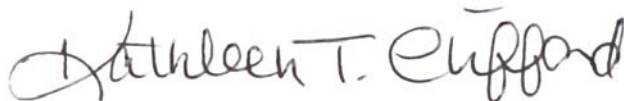
A case is rendered moot when it is impossible for a court to grant any effectual relief. Such is the situation in No. 09-1312. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990); *Phelps v. Hamilton*, 122 F.3d 1309, 1326 (10th Cir. 1997). In response to

Petitioner's timely Rule 59(e) motion, entitled "to pursue immediately my exhausted claims only," the district court vacated the July 9, 2009 Order Petitioner appeals in No. 09-1312. Federal courts may adjudicate only actual controversies. When the district court vacated the July 9, 2009 Order, No. 09-1312 was rendered moot.

Moreover, the July 22, 2009 Order appealed by Petitioner in *No. 09-1350* is interlocutory and not immediately appealable under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule. It is clear from the July 22 order that Petitioner's mental competency and jury instructions claims remain unresolved in the district court. Following entry of final judgment by the district court disposing of all claims, Petitioner may timely appeal any district court order or judgment denying his § 2254 claims.

These appeals are **DISMISSED** for lack of appellate jurisdiction. All pending motions are **DENIED**.

Entered for the Court,  
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, appearing to read "Kathleen T. Clifford". The signature is fluid and cursive, with the first name "Kathleen" being more prominent and the last name "Clifford" following in a similar style.

Kathleen T. Clifford  
Attorney - Deputy Clerk